

### Remarks

This is in reply to the official action of October 14, 2008.

A request for a one month extension of time is requested and a check for the \$65.00 fee is enclosed.

Claims 13-16, 20, and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glover et al. U.S. Pat. 6,516,823 in view of Kalnay U.S. Pat. 6,766,623.

The present application is an international application having a filing date of October 7, 2003 claiming priority of German Utility Model No. 202 15 597.8 of October 10, 2002. The content of the German Utility Model and the present application are the same thus **the present application has the full benefit of the October 10, 2002 priority date.**

Glover et al. is non-analogous art in that it is concerned with a canopy for covering of a play yard. It is quite clear that that none of the members used in the frame of Glover et al. are capable of "receiving and transporting bags to be suspended in the rack" as required by all pending claims. Cross members of Glover et al fold in the middle having a hinge that would provide a weak spot with respect to carrying bag weight. These cross members of Glover et al., are clearly not "held together in substantially rigid manner by a **pipe clamp** reaching over the connection region". Further Grover et al. does not even have a "base part" as required by reasonable interpretation of all pending claims and does not use a pipe clamp.

Additionally, it is clear that Grover et al. suggests nothing concerning any structure that "in an unfolded condition the side parts extend parallel to one another and substantially perpendicular to the base part, so that similar racks can be stacked on top of one another with side frame parts aligned with one another" as presently claimed .

It is clear that the Glover device is not designed for and cannot be used as a device for receiving and transporting bags to be suspended in the rack. The horizontal upper struts 58, 60, e.g. as shown in figure 3 of Glover et al., are provided with a hinge member 63 arranged to permit folding of the struts downwardly. This means that any hanging bag suspended on the Glover et al struts would tend to fold the struts downwardly to collapse the whole rack. They are simply not designed to carry any load. Further the Glover et al. hinges are not provided with any

kind of clamp, pipe or otherwise. To make a frame having guide rails for hanging bags one simply cannot utilize anything taught in Glover et. al. and utilization of this reference is an example of classical hindsight where the claimed invention is dismembered to its parts and a search is conducted to find individual parts in prior art and then the references found as a result of this process are combined, again using the teachings in the invention in order to arrive at a combination that is asserted to be an obvious combination but is clearly not obvious in view of the fact that no person skilled in the art would reach such a combination in the absence of the teachings in the specification and claims of the pending application.

**Combining Glover et al. with Kalnay et al., as previously discussed, is based upon classical impermissible hindsight, but even if it were not, the combination is clearly a useless exercise since Kalney et al is not prior art.**

Again, the present application is an international application having a filing date of October 7, 2003 claiming priority of German Utility Model No. 202 15 597.8 of October 10, 2002. The content of the German Utility Model and the present application are the same thus **the present application has the full benefit of the October 10, 2002 priority date.**

**The Kalney et al. reference has application and grant dates well after October 10, 2002. Kalney et al. thus cannot be cited against the present application.**

**KALNEY ET AL. CANNOT BE USED AS A REFERENCE!**

Again in any case, Kalney et al. is non-analogous art and even if combined with other cited references suggests nothing to anticipate or render obvious any of the presently pending claims. Kalney et al. discloses a foldable framework that simply could not be used for receiving and transporting suspended bags. All pending claims require "struts being pivotal toward one another parallel to the base part". Kalney et al. discloses or suggests no such structure.

The primary top member of Kalney et al. are rafters, not struts, and clearly are not suitable for accepting and transporting bags and are clearly not parallel to a base. The only item that is parallel to the base in Kalney is a fabric cinch. Such a cinch is clearly not analogous to a strut. A strut has three dimensional rigidity and is resistant to bending forces, compressive forces and tensile forces. A fabric cinch is resistant to tensile forces only. One skilled in the art

could not have looked to Kalney et al. for any helpful suggestion in making the folding rack of the present invention having “struts being pivotal toward one another parallel to the base part” “for receiving and transporting bags to be suspended in the rack”.

Kalney et al. does even have cross members to be “held together in substantially rigid manner by a pipe clamp reaching over the connection region” as required by the present claims.

Further, Kalney et al. suggests nothing concerning any structure that “in an unfolded condition the side parts extend parallel to one another and substantially perpendicular to the base part, so that similar racks can be stacked on top of one another with side frame parts aligned with one another” as presently claimed .

**Kalney is not citable prior art and even if it were, Glover et al. and Kalney have the same critical defects in disclosure. They suggest nothing helpful for arriving at the presently claimed invention.**

**No parallel struts are suggested by either reference capable of “receiving and transporting bags to be suspended in the rack”**

**Neither reference suggests any structure that “in an unfolded condition the side parts extend parallel to one another and substantially perpendicular to the base part, so that similar racks can be stacked on top of one another with side frame parts aligned with one another” as presently claimed , and**

**Neither reference suggests anything concerning cross members parallel to a base “held together in substantially rigid manner by a pipe clamp reaching over the connection region” as required by the present claims.**

**The rejection is clearly improper and should be withdrawn!!**

Claims 13-16, 20, and 24-26 have been rejected under 35 U.S.C. 103 as being unpatentable over EP 0612301 in view of Glover et al.

This rejection is clearly improper and should be withdrawn.

This combination of references is clearly based upon impermissible hindsight. In any case, even if Glover et al. were a proper reference and if the combination were not based upon impermissible hindsight, the combination would not suggest any of the presently pending claims.

The failure of Glover et al. to suggest any of a multitude of limitations in all pending claims has been previously discussed. The EP reference suggests nothing to cure these defects.

The EP reference suggests nothing concerning any structure that “in an unfolded condition the side parts extend parallel to one another and substantially perpendicular to the base part, so that similar racks can be stacked on top of one another with side frame parts aligned with one another” as presently claimed.

In the EP reference, if one should attempt to stack the respective folded frames on top of one another, it is clear that the cross struts 11 and 13 (See e.g. fig. 6 of EP 0 612 301) would overlay side part 12 forming an angle preventing them from being stacked. The EP reference thus teaches away from the present invention.

Further **the EP reference suggests nothing concerning** cross members parallel to a base “held together in substantially rigid manner by a **pipe clamp** reaching over the connection region” as required by the present claims.

The upper struts 11 of EP 0 612 301 are designed as rails for guiding the ends of cross bars 4 which are equipped with guiding elements such as rollers 7 shown in figure 3b and figure 11. There is therefore an uninterrupted rail contrary to the necessary structure of the present claims where cross members are “held together in substantially rigid manner by a pipe clamp reaching over the connection region”. The EP reference thus teaches away from the presently claimed invention.

**Neither reference or their combination suggest any structure that “in an unfolded condition the side parts extend parallel to one another and substantially perpendicular to the base part, so that similar racks can be stacked on top of one another with side frame parts aligned with one another” as presently claimed , and**

**Neither reference suggests anything concerning cross members parallel to a base “held together in substantially rigid manner by a pipe clamp reaching over the connection region” as required by the present claims.**

**The combination of these references thus also cannot make those suggestions.**

**The rejection should be withdrawn.**

Claims 17-19, and 21-23 have been rejected under 35 U.S.C. 103 as being unpatentable “over the combination of either Glover et al. in view of Kalnay, or EP 0612301 in view of Glover et al. and further in view of Zheng 6926020.”

This statement of rejection actually contains two separate rejections and is confusing.

As understood, one part of the rejection of these claims is over Glover et al in view of Kalnay, and maybe in view of Zheng. It is unclear what the phrase “and further in view of Zheng” means since it is unclear whether it refers to “Glover et al. in view of Kalnay” in addition to “EP 0612301 in view of Glover et al.” In any case, this has already been disposed of in prior discussion showing that Kalnay is not a citable reference thus rendering any rejection requiring Kalnay improper.

Further, even if Glover et al., Kalnay, and Zheng were citable, the rejection is based upon impermissible hindsight and that even if the combination were permissible, the combination does not suggest the claimed invention.

First, as previously discussed, Kalnay is not a citable reference and this rejection is thus improper for that reason alone. Even if it were citable, as previously discussed, Glover et al. with Kalnay does not disclose or suggest numerous limitations in the present claims.

Zheng would not cure the lack of suggestion of critical elements of the claims even if the combination could be made. Zheng deals with collapsible structures, e.g. for basketball games, etc., and is thus completely non-analogous art. One would not look to retaining areas for games such as basketball for teachings concerning “A folding rack having a base part and side frame parts, said rack being for receiving and transporting bags to be suspended in the rack” as required by the present claims. Zheng does not even suggest a “base part” and thus certainly does not suggest “struts being pivotal toward one another parallel to the base part” as required by all present claims. Zheng further does not suggest anything concerning cross members parallel to a base “held together in substantially rigid manner by a pipe clamp reaching over the connection region” as required by the present claims. No “pipe clamp reaching over the connection region” is suggested at all.

**No parallel struts are suggested by any cited reference capable of “receiving and transporting bags to be suspended in the rack”,**

**None of the references or their combination suggest any structure that “in an unfolded condition the side parts extend parallel to one another and substantially perpendicular to the base part, so that similar racks can be stacked on top of one another with side frame parts aligned with one another” as presently claimed , and**

**None of the references or their combination suggest anything concerning cross members parallel to a base “held together in substantially rigid manner by a pipe clamp reaching over the connection region” as required by the present claims.**

Secondly, EP 0612301 in view of Glover et al. and further in view of Zheng 6926020 does not suggest the present invention. The combination of Glover et al. In view of Zheng is inadequate as previously discussed. The EP reference adds nothing to cure the critical defects of this combination. EP ‘301 does not disclose or suggest “struts being pivotal toward one another parallel to the base part” as required by the present claims. Further EP ‘301 provides no suggestion of struts having free ends that are connectable to each other. Instead there are separate struts having no free ends to be connected to each other. EP ‘301 thus teaches away from the present invention and certainly does not cure the critical defects of Glover et al and Zheng, as previously discussed.

In further detail:

Despite prior argument showing the combination to be improper, the Examiner is still rejecting the present set of claims on basis of Glover et al. 6,516,823 in view of Kalnay 6,766,623. Regarding the priority dates, the Examiner only refers to the applicability of the Glover et al. reference which would claim priority of October 21, 1999 and would be filed on October 20, 2000. However, the Examiner is completely silent about the Kalnay reference, which was clearly filed after the priority date of the present application and does not claim any earlier priority. Accordingly, any reference to Kalnay could definitely not be used to justify the rejection of the present set of claims.

However, we understand, that the Examiner rejects claims 13 to 16, 20 and 24 to 26 independently of the Kalnay reference, on basis of EP 0 612 301 in view of Glover et al. 6,516,823. In this context, the Examiner also refers to an alleged "pipe clamp 62, 63, 64, 65" in the Glover et al. reference. However, we may respectfully notify the Examiner that the members 62 to 65 define a lockable hinge but definitely not a pipe clamp, as is clear from the description in column 4, lines 38 to 45 of Glover et al., explaining that the right portion 65 and the left portion 64 are pivotably coupled.

Further, we note the following differences in respect of any combination with EP 612 301 and Glover. The present claim refers to "a cross strut being articulated to an upper end region of each of the side frame parts said struts being pivotal toward one another parallel to the base part and free ends thereof being connectable to one another in a substantially rigid manner so that the upper end regions of the side frame parts are held by said cross struts at a minimum space defined by the cross struts, wherein in a mutually connected condition the free ends of the cross struts engage in one another in a connection region and are held together in substantially rigid manner by a pipe clamp reaching over the connection region."

Neither Glover nor the above EP application shows the aforementioned features neither individually nor in combination with each other. In particular, EP '301 does not have struts being pivotal toward one another to the base parts and free ends thereof being connectable to one another. Instead, there is a single rigid cross strut which is not pivotal with respect to the base part and always remains parallel to the base part and there is of course no plurality of struts having free ends which would be connectable with each other. Instead, there are separate parallel struts having no free ends to be connected with each other. Also Glover does not show any struts having free ends. Instead, the respective struts are pivotally connected by means of a lockable hinge. In addition, the Glover et al. device is not stackable in an unfolded condition as should be clear from figure 1 and 15.

Finally, any combination of Glover et al. and EP '301 would not make any sense for a skilled person and the examiner's approach is clearly guided by hindsight. Both of the aforementioned documents provide different concepts, wherein EP '301 provides the rigid lower

and upper frames connected by vertical posts which are pivotably connected to both, the lower and the upper frame and comprise an addition hinge in the middle thereof. In contrast, Glover et al. provides a rack having rigid vertical posts while instead the horizontal cross struts are pivotable with respect to the post toward a vertical position. It cannot be seen how these different concepts should be reasonably combined and how a skilled person should apply any of the features from Glover to the EP '301-device, wherein in particular the hinge in the middle of the cross struts as shown by Glover would be completely superfluous for the respective cross struts in EP '301, since the foldability of EP '301 is already ensured by the middle hinge and upper and lower hinges of the vertical post so that any additional hinge in the cross struts would be completely superfluous and would not make any sense.

Regarding the further rejection of claim 17-19, and 21-23, we note that again the Examiner relies on the not applicable document Kalnay. Regarding the combination Glover, EP '301 and Zheng, we note, that the addition of Zheng would of course not render any combination between Glover and EP '301 more reasonable.

**All rejections are thus improper and should be withdrawn!!!**

In view of the foregoing amendments and remarks, it is clear that all rejections should be withdrawn and all claims should be allowed, which action is courteously requested.

Respectfully submitted,



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